

1 What did you tell her?

2 A That I can't do the work, that there's a lot of work  
3 in these things, running the station and applying for them,  
4 and I'm not going to be able to help you along. I don't have  
5 the time or energy and I don't want to divert my attention  
6 away from other things that I'm supposed to be doing.

7 Q And you think that's what -- that is the reason why  
8 you want to be a limited partner as opposed to a general  
9 partner?

10 A Yes, I think so.

11 Q What would, what would prevent you from being a  
12 general partner and still being less active in the -- than  
13 another general partner, much as your condition in St. James  
14 today?

15 A Well, I just wanted to be up front at the start with  
16 Carmella, that I really didn't want to have anything to do  
17 with this. You know, I wanted her to do all the work and have  
18 all the responsibility and if I would have said we'll both be  
19 partners, general partners, then she might have -- it might  
20 have been a different situation.

21 Q Well, it wouldn't have -- it would have been a  
22 different situation from the standpoint of the attractiveness  
23 to the FCC's comparative criteria, but from the standpoint of  
24 meeting your objective of staying home in Minnesota, I don't  
25 quite see the difference.

1 MR. MILLER: Your Honor, that's argument. It's not  
2 a question.

3 MR. WARD: That's true. That is true.

4 BY MR. WARD:

5 Q The -- did you discuss with her any other legal form  
6 such as a two tier stock corporation which would have afforded  
7 the same degree of protection to you or to the application for  
8 having attributed your interest?

9 A I really don't think I did. I wanted to keep it  
10 simple and I guess my opinion at the time, still is, that a  
11 limited partnership seemed simpler than incorporating.

12 Q During this, during this time, that is to say we're  
13 talking now -- we're really talking September of '91, are we  
14 not, when you first talked to Ms. Sample about this?

15 A I honestly can't pin down a date, whether it was  
16 August or September.

17 Q Well, we know from the documents that Mr. McVey was  
18 informed by a letter of August 8th by Mr. Lysiak that it was  
19 -- would be possible to locate a transmitter that didn't  
20 involve the 70 dBu overlap and that -- he advised you then and  
21 you weren't interested initially and you said it took about a  
22 month for you to, to become interested. So a month from  
23 September 8 or 9 would be -- from August 8 or 9 would be the  
24 first week or so of September, would it not?

25 A I said a month, but it could have been two weeks or

1 a week. I don't know.

2 Q Okay. Did you during that -- during August or  
3 September consult with or advise Mr. Neely or Mr. Miller of  
4 your interest in, in pursuing an Eldon application on some  
5 basis?

6 A I don't recall for sure.

7 Q It would have been a natural thing to do, wouldn't  
8 it?

9 A Yes.

10 Q Because they represented you in the Eddyville  
11 situation?

12 A Yes.

13 Q And you were, you were concerned about avoiding 70  
14 dBu overlap in any event, were you not?

15 A No, I think that's true. I was concerned about 70  
16 dBu overlap if KIS would have owned the station.

17 MR. MILLER: Could the witness explain KIS.

18 WITNESS: KKSI.

19 BY MR. WARD:

20 Q Well, did you discuss with your counsel the  
21 implications of avoiding or ignoring 70 dBu overlap at KKIS  
22 (sic)?

23 A I just don't know if I did or not.

24 Q Did they -- let me try to refresh your recollection.  
25 Did they, did they advise you that, that in a case like this

1 | there's always the risk that the Commission would not credit  
2 | your, your limited partner status and would find your interest  
3 | -- find that you were really active on some, on some basis?

4 |           MR. MILLER: Your Honor, I don't --

5 |           MR. WARD: I haven't finished.

6 |           MR. MILLER: Well, I just want to call the witness'  
7 | attention to the attorney/client privilege because I think Mr.  
8 | Ward's questions are getting --

9 |           MR. WARD: I haven't intruded on any advice. I  
10 | think if I just complete the question, if I may?

11 |           JUDGE FRYSIK: Go ahead. You can ask him.

12 |           MR. WARD: If I may.

13 |           BY MR. WARD:

14 |       Q     My question was simply this, whether -- simply may  
15 | be an oversimplification, but whether, whether counsel did not  
16 | inform you that there was a potential in any case of this  
17 | nature that, that people who were starting off as limited  
18 | partners ended up being viewed by the Commission as, as active  
19 | and that in the event that that were to occur in a case in  
20 | which you were involved, it would be -- if there were 70 dBu  
21 | overlap between this proposal and the Eddyville station, that  
22 | could require dismissal of the application because of a  
23 | violation of Commission overlap rules -- at that time.

24 |           MR. MILLER: If I could renew that this calls -- the  
25 | answer calls for a discussion of advice that the witness may

1 have received from counsel.

2 MR. WARD: Well, let the witness --

3 JUDGE FRYSIK: The witness is aware of the 70 dBu.

4 Now, we got to find out how he's aware. That's fair, fair --

5 WITNESS: What is the question?

6 MR. WARD: Your Honor, I don't want the direct to be  
7 confused. I'm agreeing with Mr. Miller that I am -- it's the  
8 legal implications of such overlap in a case such as this that  
9 I'm trying to find out if the witness was aware of -- or is  
10 aware of.

11 JUDGE FRYSIK: Yes. That's -- I believe that's the  
12 input of your question and -- the witness understands --

13 BY MR. WARD:

14 Q Do you?

15 A I'd like to hear the question one more time.

16 Q All right.

17 JUDGE FRYSIK: Try it again.

18 MR. WARD: Okay.

19 BY MR. WARD:

20 Q Let me, let me try to simplify it by stating,  
21 stating the state of the law as I, as I understand it which is  
22 that -- or at least as it exists, as the Commission's  
23 regulations and policies existed in the fall of '91, that if a  
24 limited partnership was presented to it in a comparative  
25 proceeding and the -- it was determined that the -- that it

1 was not a true limited partnership or that the limitations  
2 were ineffective, that the limited partner would be deemed a  
3 -- an active participant to some extent, thereby triggering an  
4 attribution to the applicant itself of that particular  
5 partner's other interests. In such a case if the applicant's  
6 city grade contour overlapped the city grade contour of one of  
7 the attributable interests of one of the partners not deemed  
8 to be a non-passive partner, that that would trigger a rule  
9 requiring the dismissal of the application. And my question  
10 is whether you were aware of that -- made aware of that any  
11 means in August or September of '91?

12       A     I don't even know if I'm aware -- if I was aware of  
13 that until you told me just now. I was aware at the time that  
14 it's very important that I don't do -- that I have nothing to  
15 do with the application of the radio station. That I was  
16 aware of. And about having it thrown out if I was found to be  
17 an attributable owner, I was not aware.

18       Q     Okay. Now, you say that you think that you were  
19 the one who recommended to her that the entity be a limited  
20 partnership as opposed to a corporation?

21       A     I said that I couldn't be involved in it as an  
22 active partner.

23       Q     Now, for what reason? I mean, what was the basis?  
24 Earlier you said because you were too busy elsewhere, too far  
25 removed. Now you seem to be saying is that because your

1 application would suffer if you would to be an active  
2 participant.

3 I was aware that the application would suffer if I

1           A     Well, I knew that the general partner takes the  
2 responsibility for certain things and I understood that  
3 limited partners had certain -- limited liability that went  
4 along with limited responsibility.

5           Q     Did you, did you -- since she was going to be the  
6 general partner and have the -- and be personally liable for  
7 the partnership debts, did you inquire of her net worth at  
8 that time?

9           A     I knew that she didn't have much money.

10          Q     Did she tell you that?

11          A     She told me that.

12          Q     Did she show you a balance sheet?

13          A     No, she didn't.

14          Q     Did you ask her for a balance sheet?

15          A     No, I didn't.

16          Q     Did you show her your balance sheet?

17          A     I don't think I showed her a formal balance sheet.  
18 I may have shown her something with my own figures on it or  
19 just told her a total. I can't remember for sure.

20          Q     When you say your own figures --

21          A     That I could afford it.

22          Q     I'm sorry?

23          A     Saying that I had enough money to do this sort of  
24 thing.

25          Q     Something that might have listed your assets but



1 | didn't list your liabilities, for example?

2 |       A     That's not the way I --

3 |       Q     Well, I'm trying to figure out what it is you --  
4 | what -- you say your own figures. I'm not -- I assume that  
5 | any balance sheet you prepared would be your own figures, but  
6 | was it, was it a -- something that left certain --

7 |           JUDGE FRYSIK: Why don't you just ask him what it  
8 | was.

9 |           MR. WARD: I've tried to.

10 |          BY MR. WARD:

11 |       Q     What was it?

12 |       A     What was what?

13 |           JUDGE FRYSIK: That you showed her?

14 |          WITNESS: If I showed her anything, it would have  
15 | been something showing that I owned this and this and this.

16 |          JUDGE FRYSIK: Do you have a present recollection  
17 | of showing her anything?

18 |          WITNESS: No.

19 |          JUDGE FRYSIK: Do you have any recollection of  
20 | reducing into a writing anything regarding your, your  
21 | financial capability?

22 |          WITNESS: Not clear.

23 |          BY MR. WARD:

24 |       Q     Within a month of that time I think it's clear that  
25 | you did see your bank up in Mankato and obtain a loan

1 commitment from them?

2 A Yes.

3 Q Did you show them something resembling a balance  
4 sheet or a financial statement in connection with that?

5 A They have had my, I think, balance sheet on record  
6 there. I have loans out. I've had loans out consistently,  
7 but I just don't know for sure if I showed them something or  
8 if they had something, you know, other loans.

9 Q You say you've had loans out there consistently for  
10 -- is that for a period of, of years, many years?

11 MR. MILLER: Your Honor, we're getting into a  
12 financial issue here.

13 MR. WARD: Not really. I'm just -- well, I don't  
14 want to do that.

15 JUDGE FRYSIK: But I think you're -- and I'll  
16 sustain it.

17 MR. WARD: Okay.

18 BY MR. WARD:

19 Q Did they require you -- did the bank require you to  
20 update your balance sheet with them at least once a year?

21 MR. MILLER: Your Honor, again, I don't know the  
22 relevance of this --

23 MR. WARD: I'm trying to find out if a -- then it  
24 gets back to what he, what he may have shown her and I'm just  
25 -- whether it was the same balance sheet or if he has --

1 JUDGE FRYSIAK: I'm going to sustain the objection  
2 to the last question. You might have to rephrase it. But he  
3 doesn't have any recollection of showing Carmella Day  
4 anything.

5 MR. WARD: That's okay. Well, let me ask him --  
6 that's probably a good point to just leave it.

7 BY MR. WARD:

8 Q In any event, the local lawyer she hired presented  
9 you and her with a, a draft partnership agreement, did he not?

10 A I don't know if he presented me with a draft  
11 partnership agreement. I can't remember. I -- all that I can  
12 remember is that I read the partnership agreement. I'm not  
13 positive if I had read it before being in the office.

14 Q You don't know whether he sent a copy to you or just  
15 said it's ready, come in and sign it?

16 A I just can't recall.

17 Q And your files don't contain any preliminary drafts?

18 A No, they don't.

19 Q Ms. Sample's files did contain a preliminary draft  
20 which was -- had some slight differences from the final draft,  
21 so there was a preliminary draft. It also contained some  
22 handwritten notations by her. Let me show, show that to you,  
23 something we discussed on the record yesterday. You were not  
24 here. On page 3 of this draft --

25 JUDGE FRYSIAK: What -- did that answer Exhibit 2?

1           MR. WARD: This is not an exhibit, Your Honor. This  
2 -- it's page 3 of a preliminary draft of the limited  
3 partnership agreement which -- the final one of which is a --  
4 is what, Exhibit 1, attached to Exhibit 1?

5           MR. NEELY: Sample Exhibit 1.

6           BY MR. WARD:

7           Q     But on page 3 she made some margin notations beside  
8 the typed text which talks about the liability of the limited  
9 partnership losses and she, in her handwriting, said, "Don't  
10 like. Bruce only responsible up to \$6,000 in losses." Did  
11 she ever discuss that with you or tell you that was a problem  
12 to her or concern of hers?

13          A     I think she expressed some, some caution, quipped  
14 from time to time about things she didn't completely  
15 understand.

16          Q     Did you say equipment? What did you say?

17          A     Quipped. Is that a word?

18          Q     Quipment?

19          A     Quipped, uh-huh.

20                JUDGE FRYSIK: Q-U-I-P.

21                WITNESS: Reservations or a little -- she's  
22 cautious. She's always double-checking things.

23           BY MR. WARD:

24          Q     So she's expressed these from time to time? Did I  
25 understand you to say that in your last answer?



1 Q Uncertain?

2 A Looking out to make sure that things were fair.

3 Q Now, looking at that Exhibit 1, as long as we have  
4 that handy, looking at the --

5 MR. NEELY: The partnership agreement?

6 MR. WARD: Yeah, the limited partnership agreement  
7 portion of it, right.

8 BY MR. WARD:

9 Q Turn to page 2 of that agreement. Do you have that?  
10 Under Article 5, Contributions?

11 JUDGE FRYSIK: Page 2 of the agreement, page 4 of  
12 the exhibit.

1 contributed as part of that capital?

2 A I haven't contributed any services that I can think  
3 of.

4 Q You have contributed \$6,000?

5 A Yes.

6 Q Okay. Looking above at the, at the paragraph with  
7 respect to Ms. Sample. It says that, "she will contribute as  
8 capital and services herself" -- "she shall be deemed to have  
9 contributed as capital and services in the agreed sum of  
10 \$4,000 representing 40 percent of the total equity." Did she  
11 -- has she paid \$4,000 to the partnership?

12 A No, she didn't pay it.

13 Q She didn't pay anything, did she?

14 A She didn't pay cash to the partnership.

15 Q She's not obliged to pay cash, is she? She has  
16 provided services?

17 A That is correct.

18 Q Those have been valued at \$4,000?

19 A I guess. Apparently.

20 Q What -- I'm sorry. What do you mean by apparently?

21 A I'm not a legal expert and I don't know exactly.

22 Q Now, on the next page, last paragraph on the next  
23 page, starting in the middle, it appears to obligate you as a  
24 limited partner to loan the partnership all the funds required  
25 --

1           MR. NEELY: Which paragraph are you looking at, Don,  
2 the one that commences, "No partner may make any voluntary?"

3           MR. WARD: That's the one.

4           MR. NEELY: Is that the paragraph?

5           MR. WARD: Yes.

6           MR. NEELY: Mr. Linder's reviewing that paragraph.

7           BY MR. WARD:

8           Q     Okay. Yeah. Take a look at that.

9           A     Yes.

10          Q     Okay. As I read it, that obliges you to totally  
11 fund the -- all the costs of the prosecution of this  
12 application. Correct?

13          A     That's the way I read it, too.

14          Q     And that, in fact, is the way it has been handled so  
15 far? You have contributed all the money, all the funds?  
16 You've loaned all the funds to Sample Broadcasting required to  
17 prosecute the application, pay the bills? Correct?

18          A     Yes. The money that she required I loaned to her.

19          Q     I'm sorry?

20          A     It's money that she requested that I have loaned to  
21 her.

22          Q     Okay. How are those requests handled? Does she  
23 call you up and say Bruce, send me ten grand, just got a bill  
24 from Mr. Miller or --

25          A     Essentially, yes.



1 Q And do you ever ask her -- does she ever say please  
2 send ten grand, but not tell you why or you have to ask her?

3 A No. She, she tells me what it's for.

4 Q Does she give you regular written reports about  
5 financial needs or do you just handle them informally?

6 A Very informally, yes.

7 Q Now, this provision says -- states that --

8 MR. NEELY: You still on the same paragraph?

9 MR. WARD: Yes, the same paragraph.

10 BY MR. WARD:

11 Q It says that, "repayment will not be required prior  
12 to a date six months after the radio station begins broadcast  
13 operations." Let me back up. It says, "In no event shall the  
14 loan be payable prior to the dismissal of the application  
15 before the Commission pursuant to a settlement agreement or  
16 prior to a date six months after the radio station begins  
17 broadcast operations." Is the loan payable -- repayable in  
18 the event that the application is denied?

19 A I just don't know.

20 Q You never discussed it with her?

21 A No.

22 Q Is it repayable if the application is dismissed but  
23 not pursuant to a settlement agreement?

24 A I don't remember the specifics.

25 Q Was this language suggested by you or suggested by

1 the local attorney?

2 A The language?

3 Q Yes.

4 A It was not suggested by me.

5 Q Did you ever confer with the local attorney  
6 concerning the contents of this limited partnership agreement  
7 before you first saw the agreement?

8 A No. I had little or no discussion with the local  
9 attorney.

10 Q Well, which? Little or no? I mean, that's --

11 A When I --

12 Q There's a big difference.

13 A When I came on the, I believe, the 25th of September  
14 to sign it, I asked him some questions.

15 Q That was the first time you'd ever spoken to him  
16 about it?

17 A I think so.

18 Q Did -- do you know whether he consulted with your  
19 communications counsel at all in the preparation of this?

20 A I don't know. I was under the understanding that,  
21 that it happened.

22 Q That he did? Because it does seem to make reference  
23 to --

24 A Could you ask that question again, please?

25 Q Yeah. I said do you know whether he -- that is, Mr.

1 -- the Iowa attorney whose name I -- Mr. Webber, did he  
2 consult with -- do you know if he consulted with or was  
3 consulted by your Washington communications counsel in --

4 A What do you mean by your? Do you mean Sample  
5 Broadcasting communications --

6 Q Or Eddyville's, Mr. -- possibility of Mr. Miller,  
7 Mr. Neely?

8 A Well, he -- I was told that he consulted with Mr.  
9 Neely.

10 Q You were told by him?

11 A By Carmella.

12 Q By Carmella that he, that he, Mr. Webber, consulted  
13 with Mr. Neely?

14 A Yeah, that they were working out some things.

15 Q You were told by her, told by her in September of  
16 '91 contemporaneously with this happening?

17 A I think so.

18 Q This agreement also obliges you to fund the  
19 construction and operation of the station, this limited  
20 partnership agreement?

21 A I think I've read it and I don't see specifically  
22 where it talks about funding the operation of the station or  
23 the construction loan. Something I said a moment ago I --  
24 when I said that Carmella told me that her lawyer and Mr.  
25 Neely had talked to each other, that may not be true. It

1 | could have been that I heard it from Mr. Webber when I met  
2 | with Mr. Webber and Carmella the day I signed it, that he said  
3 | that he had some things that Neely had -- the Washington  
4 | attorney had suggested that we have in this document.

5 |       Q     Now, I note that the agreement was signed by you and  
6 | Carmella on different dates. When you went to the lawyer's  
7 | office -- to Mr. Webber's office to sign it, you were not  
8 | accompanied by Ms. Sample?

9 |       A     Yes, I think I was. I'm quite sure I was. There  
10 | was a, a clerical error. It was -- instead of -- it was  
11 | missing limited or something. It was just a word or a  
12 | phrasing and I didn't want to be coming back to sign it after  
13 | that was correct and so I said, "I'll sign it," and Carmella  
14 | wanted to wait until it was corrected or something.

15 |       Q     I see.

16 |       A     I can't remember exactly, but something like that  
17 | happened.

18 |       P     So you were not with her the next day when she went

1           A     Correct.

2           Q     And you did manage to do that through arranging a  
3 bank loan on or about October 9, 1991, did you not? I'll show  
4 you the -- maybe you have copies?

5           A     I didn't have a copy with me today.

6           Q     I should have made some more copies. I'm showing  
7 you these two letters. Do you recognize these?

8           A     Yes, I do.

9           Q     One is a letter from American Banks, the second page  
10 there, from American Banks to, to you on October 9, '91 and  
11 the second is a letter from you to Carmella on October 9, '91?  
12 Correct? And --

13           MR. WARD: Your Honor, I'm missing a page here.  
14 Maybe it would be a good time to take a little --

15           JUDGE FRYSIK: All right, sure.

16           MR. WARD: -- two minute break.

17           JUDGE FRYSIK: Take a five minute recess.

18           MR. WARD: Five minutes?

19           (Off the record from 2:37 p.m. to 2:42 p.m.)

20           BY MR. WARD:

21           Q     In essence the bank's letter to you indicate this  
22 woman was to lend you \$300,000, the proceeds of which, and I'm  
23 quoting now, "The proceeds of which would be used to finance  
24 your investment in the above-referenced company." The above-  
25 referenced company is Sample Broadcasting Company. And then

1 it spells out several items, terms and conditions indicating  
2 that the interest rate would be 2 percent above the variable  
3 rate, that interest only would be payable for the first six  
4 months, and that the principle balance thereafter would be  
5 amortized in 60 equal monthly payments, right? And it would  
6 be secured by a first lien and all of the assets of the  
7 proposed station, as well as my personal guarantee of Bruce  
8 Linder? Correct? And that's really about all the terms that  
9 they describe, isn't it?

10 MR. MILLER: Your Honor, I don't see the relevance  
11 of -- if this is the question of what the terms are to this  
12 issue.

13 MR. WARD: Well, Your Honor, I'm -- we'll talking  
14 about the second letter and then we'll get to --

15 JUDGE FRYSIK: Okay. You may continue.

16 MR. WARD: Trust me.

17 BY MR. WARD:

18 Q Your letter to Ms. Sample then says, I -- "Dear  
19 Carmella, I agree to loan the partnership \$300,000. I  
20 personally have been assured a loan in the same amount from  
21 American Bank of Mankato. I will extend the same terms that  
22 the bank offered to me. One, this loan will bear interest at  
23 a variable rate equal to American Bank of Mankato rate plus 2  
24 percent. Paragraph 2, interest only to be payable during the  
25 first six months after which time the principle balance would

1 be amortized in 60 monthly equal installments. My loan to the  
2 partnership shall be secured by a valid first lien on the  
3 assets of the station, which lien I will assign to the bank."

4 Does that -- have I correctly summarized that letter?

5 A Yes, that is correct.

6 Q The relevance is really this, that if this station  
7 doesn't meet the payments on this loan, you're going to be  
8 personally liable, are you not?

9 A At the bank?

10 Q Yes.

11 A Yes.

12 Q And as general partner of the partnership, Ms.  
13 Sample will be personally liable to the extent that you're  
14 personally liable, won't she?

15 MR. MILLER: I think that calls for a legal  
16 conclusion.

17 MR. WARD: Well, I want the witness' understand.

18 BY MR. WARD:

19 Q Don't you understand that she will be personally  
20 liable for any unpaid debts of the partnership?

21 A I think she has a lot of liability. I don't  
22 understand completely where it ends and under what  
23 circumstances.

24 Q If the bank forecloses on this loan, they might  
25 foreclose -- they might take the assets? Correct? They have

1 the right to take the assets? They will have a physical lien  
2 on the assets?

3 A From what I understand, in due time in a  
4 foreclosure, that banks or whoever loans money goes after  
5 assets is my understanding.

6 Q And they might come after your assets personally  
7 because of your personal guarantee?

8 A If it took enough time to, to get this thing settle,  
9 yes. It often takes six months or a year or two years before  
10 these things happen from what I understand.

11 Q Do you have any -- you don't have any personal --  
12 have you ever been through a Chapter 11 proceeding yourself or  
13 a foreclosure proceeding?

14 A No, not myself, I haven't.

15 Q But the bank -- the bank would be looking to you and



1 the payments couldn't be made on this loan?

2 MR. MILLER: Your Honor, we're very speculative  
3 here, if payments couldn't be on, on the note and so forth. I  
4 think we're well into the realm -- speculation.

5 JUDGE FRYSIK: Yeah. I don't see any of this --  
6 the relevance of this. You're going to have to clue me in,  
7 Mr. Ward.

8 MR. WARD: Well, I'm talking about -- the relevance,  
9 Your Honor, is potential control. It requires you have a  
10 limited partnership agreement which, which forecloses Mr.  
11 Linder from certain activities. He's going to have a creditor  
12 relationship with --

13 JUDGE FRYSIK: Well, I think you're going to have  
14 to supply the documents that have been -- agreements that have  
15 been entered into and then let the court make the legal, you  
16 know, conclusions.

17 MR. WARD: But this --

18 JUDGE FRYSIK: But you might argue in your proposed  
19 findings, but asking of this witness what the legal, you know,  
20 ramifications are simply is not useful.

21 MR. WARD: You have -- I can't, I can't quarrel with  
22 Your Honor.

23 BY MR. WARD:

24 Q You haven't sought any independent legal advice as  
25 to your creditor rights vis-a-vis Sample Broadcasting --